

consents that such activity may be conducted by a service corporation of an insured state savings association without first obtaining the FDIC's consent. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(A) *Equity securities of a company that engages in permissible activities.* A service corporation may own the equity securities of a company that engages in any activity permissible for a Federal savings association.

(B) *Equity securities of a company that acquires and retains adjustable-rate and money market preferred stock.* A service corporation may own the equity securities of a company that engages in any activity permissible for an insured state savings association under § 362.11(b)(2)(iii) so long as instruments held under this paragraph (b)(2)(ii)(B), paragraph (b)(2)(iv) of this section, and § 362.11(b)(2)(iii) in the aggregate do not exceed the limit set by § 362.11(b)(2)(iii).

(C) *Equity securities of a company acting as an insurance agency.* A service corporation may own the equity securities of a company that acts as an insurance agency.

(iii) *Activities that are not conducted "as principal".* A service corporation controlled by the insured state savings association may engage in activities which are not conducted "as principal" such as acting as an agent for a customer, acting in a brokerage, custodial, advisory, or administrative capacity, or acting as trustee, or in any substantially similar capacity.

(iv) *Acquiring and retaining adjustable-rate and money market preferred stock.* A service corporation may engage in any activity permissible for an insured state savings association under § 362.11(b)(2)(iii) so long as instruments held under this paragraph (b)(2)(iv), paragraph (b)(2)(ii)(B) of this section, and § 362.11(b)(2)(iii) in the aggregate do not exceed the limit set by § 362.11(b)(2)(iii).

(3)–(4) [Reserved]

(c) *Investment and transaction limits.* The restrictions detailed in § 362.4(d) apply to transactions between an insured state savings association and any

service corporation engaging in activities which are not permissible for a service corporation of a Federal savings association if specifically required by this part or FDIC order. For purposes of applying the investment limits in § 362.4(d)(2), the term "investment" includes only those items described in § 362.4(d)(2)(ii)(A) (3) and (4). For purposes of applying § 362.4(d)(2), (3), and (4) to this paragraph (c), references to the terms "insured State bank" and "subsidiary" in § 362.4(d)(2), (3), and (4), shall be deemed to refer, respectively, to the insured state savings association and the service corporation. For purposes of applying § 362.4(d)(5), references to the terms "insured State bank" and "subsidiary" in § 362.4(d)(5) shall be deemed to refer, respectively, to the insured state savings association and the service corporations or subsidiaries.

(d) *Capital requirements.* If specifically required by this part or by FDIC order, an insured state savings association that wishes to conduct as principal activities through a service corporation which are not permissible for a service corporation of a Federal savings association must:

(1) Be well-capitalized after deducting from its capital any investment in the service corporation, both equity and debt.

(2) Use such regulatory capital amount for the purposes of the insured state savings association's assessment risk classification under part 327 of this chapter.

[63 FR 66326, Dec. 1, 1998, as amended at 66 FR 1029, Jan. 5, 2001]

§ 362.13 Approvals previously granted.

FDIC consent by order or notice. An insured state savings association that previously filed an application and obtained the FDIC's consent to engage in an activity or to acquire or retain an investment in a service corporation engaging as principal in an activity or acquiring and retaining any investment that is prohibited under this subpart may continue that activity or retain that investment without seeking the FDIC's consent, provided the insured state savings association and the service corporation, if applicable, continue to meet the conditions and restrictions

Federal Deposit Insurance Corporation

§ 362.17

of approval. An insured state savings association which was granted approval based on conditions which differ from the requirements of §§ 362.4(c)(2) and 362.12 (c) and (d) will be considered to meet the conditions and restrictions of the approval if the insured state savings association and any applicable service corporation meet the requirements of §§ 362.4(c)(2) and 362.12 (c) and (d). For the purposes of applying § 362.4(c)(2), references to the terms “eligible subsidiary” and “subsidiary” in § 362.4(c)(2) shall be deemed to refer, respectively, to the eligible service corporation and the service corporation.

Subpart D—Acquiring, Establishing, or Conducting New Activities Through a Subsidiary by an Insured Savings Association

§ 362.14 Purpose and scope.

This subpart implements section 18(m) of the Federal Deposit Insurance Act (12 U.S.C. 1828(m)) which requires that prior notice be given the FDIC when an insured savings association establishes or acquires a subsidiary or engages in any new activity in a subsidiary. For the purposes of this subpart, the term “subsidiary” does not include any insured depository institution as that term is defined in the Federal Deposit Insurance Act. Unless otherwise indicated, the definitions provided in § 362.2 apply to this subpart.

§ 362.15 Acquiring or establishing a subsidiary; conducting new activities through a subsidiary.

No state or Federal insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, unless it files a notice in compliance with § 303.142(c) of this chapter at least 30 days prior to establishment of the subsidiary or commencement of the activity and the FDIC does not object to the notice. This requirement does not apply to any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law or any savings association that acquired its principal assets from such an institution.

Subpart E—Financial Subsidiaries of Insured State Nonmember Banks

SOURCE: 66 FR 1029, Jan. 5, 2001, unless otherwise noted.

§ 362.16 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart G of part 303 of this chapter, implements section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w) and requires that an insured state nonmember bank certify certain facts and file a notice with the FDIC before the insured state nonmember bank may control or hold an interest in a financial subsidiary under section 46(a) of the Federal Deposit Insurance Act. This subpart also implements the statutory Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) requirement set forth in subsection (4)(l)(2) of the Bank Holding Company Act (12 U.S.C. 1843(l)(2)), which is applicable to state nonmember banks that commence new activities through a financial subsidiary or directly or indirectly acquire control of a company engaged in an activity under section 46(a).

(b) This subpart does not cover activities conducted other than “as principal”. For purposes of this subpart, activities conducted other than “as principal” are defined as activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee, or in any substantially similar capacity. For example, this subpart does not cover acting solely as agent for the sale of insurance, securities, real estate, or travel services; nor does it cover acting as trustee, providing personal financial planning advice, or safekeeping services.

§ 362.17 Definitions.

For the purposes of this subpart, the following definitions will apply:

(a) *Activity, company, control, insured depository institution, insured state bank, insured state nonmember bank and subsidiary* have the same meaning as provided in subpart A of this part.